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1 John Desmarais (to be admitted pro hac vice)  
jdesmarais@kirkland.com  
2 Gregory S. Arovas (to be admitted pro hac vice)  
garovas@kirkland.com  
3 KIRKLAND & ELLIS LLP  
153 East 53rd Street  
4 New York, New York 10022-4611  
Telephone: (212) 446-4800  
5 Facsimile: (212) 446-4900

6 Christian Chadd Taylor (S.B.N. 237872)  
ctaylor@kirkland.com  
7 Adam R. Alper (S.B.N. 196834)  
aalper@kirkland.com  
8 KIRKLAND & ELLIS LLP  
555 California Street  
9 San Francisco, California 94104-1501  
Telephone: (415) 439-1400  
10 Facsimile: (415) 439-1500

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SEP 30 2008

ADR

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

11 Attorneys for Plaintiff INTEL CORPORATION

12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14  
15  
16 INTEL CORPORATION,

17 Plaintiff,

18 v.

19 WI-LAN, INC.

20 Defendant.  
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24  
25  
26  
27  
28

C08 04555 HRL  
Case No.

COMPLAINT FOR DECLARATORY  
JUDGMENT

DEMAND FOR JURY TRIAL

1  
2 **COMPLAINT**

3 Plaintiff Intel Corporation ("Intel") for its Complaint against Wi-LAN, Inc. ("Wi-LAN"),  
4 hereby demands a jury trial and alleges as follows:

5 **NATURE OF THE ACTION**

6 1. This is an action for declaratory judgment of non-infringement, invalidity, and  
7 unenforceability of eighteen (18) United States Patents pursuant to the Declaratory Judgment Act, 28  
8 U.S.C. §§ 2201-02, and the Patent Laws of the United States, 35 U.S.C. § 100 *et seq.*, and for such  
9 other relief as the Court deems just and proper.

10 **INTRADISTRICT ASSIGNMENT**

11 2. This action includes patent-based declaratory judgment claims arising in connection  
12 with conduct occurring in or directed to Santa Clara County. Moreover, Intel's headquarters is  
13 located in Santa Clara County, and Intel employees with knowledge of the products likely to be at  
14 issue in this action are located within Santa Clara County. Accordingly, assignment to the San Jose  
15 Division is appropriate.

16 **PARTIES**

17 3. Plaintiff Intel is a corporation organized and existing under the laws of the State of  
18 Delaware and having its principal place of business at 2200 Mission College Boulevard, Santa Clara,  
19 California, 95054, and is doing business in this District.

20 4. On information and belief, defendant Wi-LAN, Inc., is a corporation organized and  
21 existing under the laws of Canada and having its principal place of business at 11 Holland Avenue,  
22 Suite 608, Ottawa, Ontario, Canada. As alleged herein, Wi-LAN has engaged in various acts in and  
23 directed to California.

24 **JURISDICTION AND VENUE**

25 5. This Court has exclusive subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331,  
26 1338(a), 1367, 2201, and 2202, and the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*  
27 Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.

28 6. Wi-LAN purports to be the owner of rights in U.S. Patent Nos. 6,459,687, 6,549,759,

1 6,577,863, 6,683,866, 6,693,887, 6,728,514, 6,804,211, 6,925,068, 6,944,188, 6,956,834, 6,963,617,  
2 7,006,530, 7,023,798, 7,177,598, 7,197,022, 7,289,467, 7,317,704, and 7,379,441 (collectively, the  
3 "Patents-in-Suit"). On its website, Wi-LAN alleges that the Patents-in-Suit relate to "WiMAX"  
4 products. WiMAX (Worldwide Interoperability for Microwave Access) and 802.16 refer to a  
5 wireless broadband communication standard promulgated by the IEEE. Wi-LAN has asserted these  
6 patents, including by asserting them against Intel, made public statements regarding the alleged  
7 applicability of its patents to products having WiMAX functionality including Intel's products, and  
8 confirmed its ability and willingness to file suit. Intel has undertaken meaningful preparations to  
9 make and sell products that comply with the IEEE 802.16 standards. Intel has not infringed and  
10 does not infringe, either directly or indirectly, any valid and enforceable claim of any of the Patents-  
11 in-Suit, either literally or under the doctrine of equivalents, nor is it aware of any infringement of  
12 any of the Patents-in-Suit. A substantial controversy exists between the parties which is of sufficient  
13 immediacy and reality to warrant declaratory relief.

14 7. This Court has personal jurisdiction over Wi-LAN. Wi-LAN has conducted business  
15 in and directed to California pertaining to the Patents-in-Suit, and has engaged in various acts in and  
16 directed to California. Additionally, inventors, former assignees and alleged licensees of the  
17 Patents-in-Suit, and attorneys responsible for the prosecution of the Patents-in-Suit, are located in  
18 California.

### 19 20 THE PATENTS

21 8. U.S. Patent No. 6,459,687 ("the '687 patent") is entitled "Method and Apparatus for  
22 Implementing a MAC Coprocessor in a Communication System," and bears an issuance date of  
23 October 1, 2002. A copy of the '687 patent is attached hereto as Exhibit 1.

24 9. U.S. Patent No. 6,549,759 ("the '759 patent") is entitled "Asymmetric Adaptive  
25 Modulation in a Wireless Communication System," and bears an issuance date of April 15, 2003. A  
26 copy of the '759 patent is attached hereto as Exhibit 2.

27 10. U.S. Patent No. 6,577,863 ("the '863 patent") is entitled "Failure Redundancy  
28 Between Modem Interface Cards and Outdoor Units in a Wireless Communication System," and

bears an issuance date of June 10, 2003. A copy of the '863 patent is attached hereto as Exhibit 3.

11. U.S. Patent No. 6,683,866 ("the '866 patent") is entitled "Method and Apparatus for Data Transportation and Synchronization Between MAC and Physical Layers in a Wireless Communication System," and bears an issuance date of January 27, 2007. A copy of the '866 patent is attached hereto as Exhibit 4.

12. U.S. Patent No. 6,693,887 ("the '887 patent") is entitled "Method for Allocating Fractional Bandwidth in a Fixed-Frame Communication System," and bears an issuance date of February 17, 2004. A copy of the '887 patent is attached hereto as Exhibit 5.

13. U.S. Patent No. 6,728,514 ("the '514 patent") is entitled "Scalable Wireless Network Topology Systems and Methods," and bears an issuance date of April 27, 2004. A copy of the '514 patent is attached hereto as Exhibit 6.

14. U.S. Patent No. 6,804,211 ("the '211 patent"), is entitled "Frame Structure for an Adaptive Modulation Wireless Communication System," and bears an issuance date of October 12, 2004. A copy of the '211 patent is attached hereto as Exhibit 7.

15. U.S. Patent No. 6,925,068 ("the '068 patent") is entitled "Method and Apparatus for Allocating Bandwidth in a Wireless Communication System," and bears an issuance date of August 2, 2005. A copy of the '068 patent is attached hereto as Exhibit 8.

16. U.S. Patent No. 6,944,188 ("the '188 patent") is entitled "Synchronizing Clocks Across a Communication Link," and bears an issuance date of September 13, 2005. A copy of the '188 patent is attached hereto as Exhibit 9.

17. U.S. Patent No. 6,956,834 ("the '834 patent") is entitled "Method and Apparatus for Allocating Bandwidth in a Wireless Communication System," and bears an issuance date of October 18, 2005. A copy of the '834 patent is attached hereto as Exhibit 10.

18. U.S. Patent No. 6,963,617 ("the '617 patent") is entitled "OFDM Receiver With Adaptive Equalizer," and bears an issuance date of November 8, 2005. A copy of the '617 patent is attached hereto as Exhibit 11.

19. U.S. Patent No. 7,006,530 ("the '530 patent") is entitled "Method and System for Adaptively Obtaining Bandwidth Allocation Requests," and bears an issuance date of February 28,

1 2006. A copy of the '530 patent is attached hereto as Exhibit 12.

2 20. U.S. Patent No. 7,023,798 ("the '798 patent") is entitled "Adaptive Call Admission  
3 Control for Use in a Wireless Communication System," and bears an issuance date of April 4, 2006.  
4 A copy of the '798 patent is attached hereto as Exhibit 13.

5 21. U.S. Patent No. 7,177,598 ("the '598 patent") is entitled "Method and System for  
6 Reducing Channel Interference in a Frame-Synchronized Wireless Communication System," and  
7 bears an issuance date of February 13, 2007. A copy of the '598 patent is attached hereto as Exhibit  
8 14.

9 22. U.S. Patent No. 7,197,022 ("the '022 patent") is entitled "Framing For an Adaptive  
10 Modulation Communication System," and bears an issuance date of March 27, 2007. A copy of the  
11 '022 patent is attached hereto as Exhibit 15.

12 23. U.S. Patent No. 7,289,467 ("the '467 patent") is entitled "Adaptive Call Control for  
13 Use in a Wireless Communication System," and bears an issuance date of October 30, 2007. A copy  
14 of the '467 patent is attached hereto as Exhibit 16.

15 24. U.S. Patent No. 7,317,704 ("the '704 patent") is entitled "Method of Assigning Radio  
16 Channels in Wireless Networks," and bears an issuance date of January 8, 2008. A copy of the '704  
17 patent is attached hereto as Exhibit 17.

18 25. U.S. Patent No. 7,379,441 ("the '441 patent") is entitled "Framing for an Adaptive  
19 Modulation Communication System," and bears an issuance date of May 27, 2008. A copy of the  
20 '441 patent is attached hereto as Exhibit 18.

21 **COUNT I - DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 6,459,687**

22 26. Intel repeats and realleges the allegations in paragraphs 1-25 as though fully set forth  
23 herein.

24 27. Intel has not infringed and does not infringe, directly or indirectly, any valid and  
25 enforceable claim of the '687 patent.

26 28. As a result of the acts described in the foregoing paragraphs, there exists a substantial  
27 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

28 29. A judicial declaration is necessary and appropriate so that Intel may ascertain its

1 rights regarding the '687 patent.

2 **COUNT II - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 6,459,687**

3 30. Intel repeats and realleges the allegations in paragraphs 1-29 as though fully set forth  
4 herein.

5 31. The '687 patent is invalid for failure to meet the conditions of patentability and/or  
6 otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, 112 and 132.

7 32. As a result of the acts described in the foregoing paragraphs, there exists a substantial  
8 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

9 33. A judicial declaration is necessary and appropriate so that Intel may ascertain its  
10 rights regarding the '687 patent.

11 **COUNT III - DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 6,549,759**

12 34. Intel repeats and realleges the allegations in paragraphs 1-33 as though fully set forth  
13 herein.

14 35. Intel has not infringed and does not infringe, directly or indirectly, any valid and  
15 enforceable claim of the '759 patent.

16 36. As a result of the acts described in the foregoing paragraphs, there exists a substantial  
17 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

18 37. A judicial declaration is necessary and appropriate so that Intel may ascertain its  
19 rights regarding the '759 patent.

20 **COUNT IV - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 6,549,759**

21 38. Intel repeats and realleges the allegations in paragraphs 1-37 as though fully set forth  
22 herein.

23 39. The '759 patent is invalid for failure to meet the conditions of patentability and/or  
24 otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, 112 and 132.

25 40. As a result of the acts described in the foregoing paragraphs, there exists a substantial  
26 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

27 41. A judicial declaration is necessary and appropriate so that Intel may ascertain its  
28 rights regarding the '759 patent.

**COUNT V - DECLARATION OF UNENFORCEABILITY OF U.S. PATENT NO. 6,549,759**

42. Intel repeats and realleges the allegations in paragraphs 1-41 as though fully set forth herein.

43. Individuals subject to the duty of candor under 37 CFR 1.56 ("Applicants") engaged in inequitable conduct by withholding or misstating material information with intent to deceive the USPTO in connection with prosecuting the '759 patent, rendering the '759 patent unenforceable.

44. During prosecution of the '759 patent, Applicants were aware of prior art that they knew was material to patentability, including prior public disclosures material to patentability that they deliberately failed to properly disclose to the USPTO with intent to deceive.

45. For example, on or around July 7, 2000, a document entitled "Media Access Control Layer Proposal for the 802.16.1 Air Interface Specification" was submitted to the 802.16 MAC Subgroup by Glen Sater, of Motorola, and Kenneth L. Stanwood, of Ensemble Corporation. Kenneth L. Stanwood is a named inventor on the '759 patent.

46. Applicants' public disclosures, including those described above, were material to the patentability of the application that issued as the '759 patent. During prosecution of the application that issued as the '759 patent, with intent to deceive the USPTO, the applicants intentionally failed to disclose these public disclosures to the USPTO. Under Wi-LAN's improper and incorrect applications of the '759 patent's claims, these disclosures constitute prior art that renders the claims of the '759 patent invalid under 35 U.S.C. §§ 102 and/or 103.

47. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

48. A judicial declaration is necessary and appropriate so that Intel may ascertain its rights regarding the '759 patent.

**COUNT VI - DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 6,577,863**

49. Intel repeats and realleges the allegations in paragraphs 1-48 as though fully set forth herein.

50. Intel has not infringed and does not infringe, directly or indirectly, any valid and enforceable claim of the '863 patent.

1        51. As a result of the acts described in the foregoing paragraphs, there exists a substantial  
2 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

3        52. A judicial declaration is necessary and appropriate so that Intel may ascertain its  
4 rights regarding the '863 patent.

5        **COUNT VII - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 6,577,863**

6        53. Intel repeats and realleges the allegations in paragraphs 1-52 as though fully set forth  
7 herein.

8        54. The '863 patent is invalid for failure to meet the conditions of patentability and/or  
9 otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, 112 and 132.

10       55. As a result of the acts described in the foregoing paragraphs, there exists a substantial  
11 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

12       56. A judicial declaration is necessary and appropriate so that Intel may ascertain its  
13 rights regarding the '863 patent.

14       **COUNT VIII - DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 6,683,866**

15       57. Intel repeats and realleges the allegations in paragraphs 1-56 as though fully set forth  
16 herein.

17       58. Intel has not infringed and does not infringe, directly or indirectly, any valid and  
18 enforceable claim of the '866 patent.

19       59. As a result of the acts described in the foregoing paragraphs, there exists a substantial  
20 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

21       60. A judicial declaration is necessary and appropriate so that Intel may ascertain its  
22 rights regarding the '866 patent.

23       **COUNT IX - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 6,683,866**

24       61. Intel repeats and realleges the allegations in paragraphs 1-60 as though fully set forth  
25 herein.

26       62. The '866 patent is invalid for failure to meet the conditions of patentability and/or  
27 otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, 112 and 132.

28       63. As a result of the acts described in the foregoing paragraphs, there exists a substantial



1 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

2 64. A judicial declaration is necessary and appropriate so that Intel may ascertain its  
3 rights regarding the '866 patent.

4 **COUNT X - DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 6,693,887**

5 65. Intel repeats and realleges the allegations in paragraphs 1-64 as though fully set forth  
6 herein.

7 66. Intel has not infringed and does not infringe, directly or indirectly, any valid and  
8 enforceable claim of the '887 patent.

9 67. As a result of the acts described in the foregoing paragraphs, there exists a substantial  
10 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

11 68. A judicial declaration is necessary and appropriate so that Intel may ascertain its  
12 rights regarding the '887 patent.

13 **COUNT XI - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 6,693,887**

14 69. Intel repeats and realleges the allegations in paragraphs 1-68 as though fully set forth  
15 herein.

16 70. The '887 patent is invalid for failure to meet the conditions of patentability and/or  
17 otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, 112 and 132.

18 71. As a result of the acts described in the foregoing paragraphs, there exists a substantial  
19 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

20 72. A judicial declaration is necessary and appropriate so that Intel may ascertain its  
21 rights regarding the '887 patent.

22 **COUNT XII - DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 6,728,514**

23 73. Intel repeats and realleges the allegations in paragraphs 1-72 as though fully set forth  
24 herein.

25 74. Intel has not infringed and does not infringe, directly or indirectly, any valid and  
26 enforceable claim of the '514 patent.

27 75. As a result of the acts described in the foregoing paragraphs, there exists a substantial  
28 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

1           76. A judicial declaration is necessary and appropriate so that Intel may ascertain its  
2 rights regarding the '514 patent.

3           **COUNT XIII - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 6,728,514**

4           77. Intel repeats and realleges the allegations in paragraphs 1-76 as though fully set forth  
5 herein.

6           78. The '514 patent is invalid for failure to meet the conditions of patentability and/or  
7 otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, 112 and 132.

8           79. As a result of the acts described in the foregoing paragraphs, there exists a substantial  
9 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

10          80. A judicial declaration is necessary and appropriate so that Intel may ascertain its  
11 rights regarding the '514 patent.

12          **COUNT XIV - DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 6,804,211**

13          81. Intel repeats and realleges the allegations in paragraphs 1-80 as though fully set forth  
14 herein.

15          82. Intel has not infringed and does not infringe, directly or indirectly, any valid and  
16 enforceable claim of the '211 patent.

17          83. As a result of the acts described in the foregoing paragraphs, there exists a substantial  
18 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

19          84. A judicial declaration is necessary and appropriate so that Intel may ascertain its  
20 rights regarding the '211 patent.

21          **COUNT XV - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 6,804,211**

22          85. Intel repeats and realleges the allegations in paragraphs 1-84 as though fully set forth  
23 herein.

24          86. The '211 patent is invalid for failure to meet the conditions of patentability and/or  
25 otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, 112 and 132.

26          87. As a result of the acts described in the foregoing paragraphs, there exists a substantial  
27 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

28          88. A judicial declaration is necessary and appropriate so that Intel may ascertain its

1 rights regarding the '211 patent.

2 **COUNT XVI - DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 6,925,068**

3 89. Intel repeats and realleges the allegations in paragraphs 1-88 as though fully set forth  
4 herein.

5 90. Intel has not infringed and does not infringe, directly or indirectly, any valid and  
6 enforceable claim of the '068 patent.

7 91. As a result of the acts described in the foregoing paragraphs, there exists a substantial  
8 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

9 92. A judicial declaration is necessary and appropriate so that Intel may ascertain its  
10 rights regarding the '068 patent.

11 **COUNT XVII - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 6,925,068**

12 93. Intel repeats and realleges the allegations in paragraphs 1-92 as though fully set forth  
13 herein.

14 94. The '068 patent is invalid for failure to meet the conditions of patentability and/or  
15 otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, 112 and 132.

16 95. As a result of the acts described in the foregoing paragraphs, there exists a substantial  
17 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

18 96. A judicial declaration is necessary and appropriate so that Intel may ascertain its  
19 rights regarding the '068 patent.

20 **COUNT XVIII - DECLARATION OF UNENFORCEABILITY OF U.S. PATENT NO.**  
21 **6,925,068**

22 97. Intel repeats and realleges the allegations in paragraphs 1-96 as though fully set forth  
23 herein.

24 98. The '068 patent is unenforceable, including for failure to comply with 37 C.F.R.  
25 § 1.321.

26 99. As a result of the acts described in the foregoing paragraphs, there exists a substantial  
27 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

28 100. A judicial declaration is necessary and appropriate so that Intel may ascertain its

1 rights regarding the '068 patent.

2 **COUNT XIX - DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 6,944,188**

3 101. Intel repeats and realleges the allegations in paragraphs 1-100 as though fully set  
4 forth herein.

5 102. Intel has not infringed and does not infringe, directly or indirectly, any valid and  
6 enforceable claim of the '188 patent.

7 103. As a result of the acts described in the foregoing paragraphs, there exists a substantial  
8 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

9 104. A judicial declaration is necessary and appropriate so that Intel may ascertain its  
10 rights regarding the '188 patent.

11 **COUNT XX - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 6,944,188**

12 105. Intel repeats and realleges the allegations in paragraphs 1-104 as though fully set  
13 forth herein.

14 106. The '188 patent is invalid for failure to meet the conditions of patentability and/or  
15 otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, 112 and 132.

16 107. As a result of the acts described in the foregoing paragraphs, there exists a substantial  
17 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

18 108. A judicial declaration is necessary and appropriate so that Intel may ascertain its  
19 rights regarding the '188 patent.

20 **COUNT XXI - DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 6,956,834**

21 109. Intel repeats and realleges the allegations in paragraphs 1-108 as though fully set  
22 forth herein.

23 110. Intel has not infringed and does not infringe, directly or indirectly, any valid and  
24 enforceable claim of the '834 patent.

25 111. As a result of the acts described in the foregoing paragraphs, there exists a substantial  
26 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

27 112. A judicial declaration is necessary and appropriate so that Intel may ascertain its  
28 rights regarding the '834 patent.

**COUNT XXII - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 6,956,834**

113. Intel repeats and realleges the allegations in paragraphs 1-112 as though fully set forth herein.

114. The '834 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, 112 and 132.

115. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

116. A judicial declaration is necessary and appropriate so that Intel may ascertain its rights regarding the '834 patent.

**COUNT XXIII - DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 6,963,617**

117. Intel repeats and realleges the allegations in paragraphs 1-116 as though fully set forth herein.

118. Intel has not infringed and does not infringe, directly or indirectly, any valid and enforceable claim of the '617 patent.

119. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

120. A judicial declaration is necessary and appropriate so that Intel may ascertain its rights regarding the '617 patent.

**COUNT XXIV - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 6,963,617**

121. Intel repeats and realleges the allegations in paragraphs 1-120 as though fully set forth herein.

122. The '617 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, 112 and 132.

123. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

124. A judicial declaration is necessary and appropriate so that Intel may ascertain its rights regarding the '617 patent.

**COUNT XXV - DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 7,006,530**

125. Intel repeats and realleges the allegations in paragraphs 1-124 as though fully set forth herein.

126. Intel has not infringed and does not infringe, directly or indirectly, any valid and enforceable claim of the '530 patent.

127. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

128. A judicial declaration is necessary and appropriate so that Intel may ascertain its rights regarding the '530 patent.

**COUNT XXVI - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 7006,530**

129. Intel repeats and realleges the allegations in paragraphs 1-128 as though fully set forth herein.

130. The '530 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, 112 and 132.

131. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

132. A judicial declaration is necessary and appropriate so that Intel may ascertain its rights regarding the '530 patent.

**COUNT XXVII - DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 7,023,798**

133. Intel repeats and realleges the allegations in paragraphs 1-132 as though fully set forth herein.

134. Intel has not infringed and does not infringe, directly or indirectly, any valid and enforceable claim of the '798 patent.

135. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

136. A judicial declaration is necessary and appropriate so that Intel may ascertain its

1 rights regarding the '798 patent.

2 **COUNT XXVIII - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 7,023,798**

3 137. Intel repeats and realleges the allegations in paragraphs 1-136 as though fully set  
4 forth herein.

5 138. The '798 patent is invalid for failure to meet the conditions of patentability and/or  
6 otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, 112 and 132.

7 139. As a result of the acts described in the foregoing paragraphs, there exists a substantial  
8 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

9 140. A judicial declaration is necessary and appropriate so that Intel may ascertain its  
10 rights regarding the '798 patent.

11 **COUNT XXIX - DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO.**  
12 **7,177,598**

13 141. Intel repeats and realleges the allegations in paragraphs 1-140 as though fully set  
14 forth herein.

15 142. Intel has not infringed and does not infringe, directly or indirectly, any valid and  
16 enforceable claim of the '598 patent.

17 143. As a result of the acts described in the foregoing paragraphs, there exists a substantial  
18 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

19 144. A judicial declaration is necessary and appropriate so that Intel may ascertain its  
20 rights regarding the '598 patent.

21 **COUNT XXX - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 7,177,598**

22 145. Intel repeats and realleges the allegations in paragraphs 1-144 as though fully set  
23 forth herein.

24 146. The '598 patent is invalid for failure to meet the conditions of patentability and/or  
25 otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, 112 and 132.

26 147. As a result of the acts described in the foregoing paragraphs, there exists a substantial  
27 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

28 148. A judicial declaration is necessary and appropriate so that Intel may ascertain its

1 rights regarding the '598 patent.

2 **COUNT XXXI - DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO.**  
3 **7,197,022**

4 149. Intel repeats and realleges the allegations in paragraphs 1-148 as though fully set  
5 forth herein.

6 150. Intel has not infringed and does not infringe, directly or indirectly, any valid and  
7 enforceable claim of the '022 patent.

8 151. As a result of the acts described in the foregoing paragraphs, there exists a substantial  
9 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

10 152. A judicial declaration is necessary and appropriate so that Intel may ascertain its  
11 rights regarding the '022 patent.

12 **COUNT XXXII - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 7,197,022**

13 153. Intel repeats and realleges the allegations in paragraphs 1-152 as though fully set  
14 forth herein.

15 154. The '022 patent is invalid for failure to meet the conditions of patentability and/or  
16 otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, 112 and 132.

17 155. As a result of the acts described in the foregoing paragraphs, there exists a substantial  
18 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

19 156. A judicial declaration is necessary and appropriate so that Intel may ascertain its  
20 rights regarding the '022 patent.

21 **COUNT XXXIII - DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO.**  
22 **7,289,467**

23 157. Intel repeats and realleges the allegations in paragraphs 1-156 as though fully set  
24 forth herein.

25 158. Intel has not infringed and does not infringe, directly or indirectly, any valid and  
26 enforceable claim of the '467 patent.

27 159. As a result of the acts described in the foregoing paragraphs, there exists a substantial  
28 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

160. A judicial declaration is necessary and appropriate so that Intel may ascertain its



rights regarding the '467 patent.

**COUNT XXXIV - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 7,289,467**

161. Intel repeats and realleges the allegations in paragraphs 1-160 as though fully set forth herein.

162. The '467 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, 112 and 132.

163. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

164. A judicial declaration is necessary and appropriate so that Intel may ascertain its rights regarding the '467 patent.

**COUNT XXXV - DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 7,317,704**

165. Intel repeats and realleges the allegations in paragraphs 1-164 as though fully set forth herein.

166. Intel has not infringed and does not infringe, directly or indirectly, any valid and enforceable claim of the '704 patent.

167. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

168. A judicial declaration is necessary and appropriate so that Intel may ascertain its rights regarding the '704 patent.

**COUNT XXXVI - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 7,317,704**

169. Intel repeats and realleges the allegations in paragraphs 1-168 as though fully set forth herein.

170. The '704 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, 112 and 132.

171. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

172. A judicial declaration is necessary and appropriate so that Intel may ascertain its

1 rights regarding the '704 patent.

2 **COUNT XXXVII - DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO.**  
3 **7,379,441**

4 173. Intel repeats and realleges the allegations in paragraphs 1-172 as though fully set  
5 forth herein.

6 174. Intel has not infringed and does not infringe, directly or indirectly, any valid and  
7 enforceable claim of the '441 patent.

8 175. As a result of the acts described in the foregoing paragraphs, there exists a substantial  
9 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

10 176. A judicial declaration is necessary and appropriate so that Intel may ascertain its  
11 rights regarding the '441 patent.

12 **COUNT XXXVIII - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 7,379,441**

13 177. Intel repeats and realleges the allegations in paragraphs 1-176 as though fully set  
14 forth herein.

15 178. The '441 patent is invalid for failure to meet the conditions of patentability and/or  
16 otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, 112 and 132.

17 179. As a result of the acts described in the foregoing paragraphs, there exists a substantial  
18 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

19 180. A judicial declaration is necessary and appropriate so that Intel may ascertain its  
20 rights regarding the '441 patent.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, plaintiff Intel respectfully requests that judgment be entered in favor  
23 of Intel and prays that the Court grant the following relief to Intel:

24 A. A declaration that Intel has not infringed, either directly or indirectly, any valid or  
25 enforceable claim of the Patents-in-Suit;

26 B. A declaration that the Patents-in-Suit are invalid;

27 C. A declaration that the '068 and '759 patents are unenforceable;

28 D. An order declaring that Intel is a prevailing party and that this is an exceptional case,


1 awarding Intel its costs, expenses, disbursements and reasonable attorney fees under 35 U.S.C. § 285  
2 and all other applicable statutes, rules and common law; and

3 E. Such other and further relief as this Court may deem just and proper.  
4

5 **JURY DEMAND**

6 Plaintiff hereby demands a trial by jury on all issues and claims so triable.  
7

8  
9  
10 DATED: September 30, 2008

  
11 John Desmarais (*to be admitted pro hac vice*)

12 jdesmarais@kirkland.com

13 Gregory S. Arovas (*to be admitted pro hac vice*)

14 garovas@kirkland.com

15 KIRKLAND & ELLIS LLP

16 153 East 53rd Street

17 New York, New York 10022-4611

18 Telephone: (212) 446-4800

19 Facsimile: (212) 446-4900

20 Christian Chadd Taylor (S.B.N. 237872)

21 ctaylor@kirkland.com

22 Adam R. Alper (S.B.N. 196834)

23 aalper@kirkland.com

24 KIRKLAND & ELLIS LLP

25 555 California Street

26 San Francisco, California 94104-1501

27 Telephone: (415) 439-1400

28 Facsimile: (415) 439-1500

Attorneys for Plaintiff INTEL CORPORATION